Greco & Haines, Inc. *and* International Brotherhood of Teamsters, Local 443, AFL–CIO.[1]
Cases 34–CA–4851 and 34–RC–981

March 9, 1992

DECISION, ORDER, AND DIRECTION

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On June 12, 1991, Administrative Law Judge Raymond P. Green issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified.[3]

In its exceptions, the Respondent asserts that the General Counsel failed to establish the ''fundamental prerequisite'' that the employer knew of its employees' union activity before engaging in allegedly unlawful conduct. We find no merit to this contention. We agree with the judge that the General Counsel made out a prima facie case of discrimination, including the element of knowledge of the employees' union activities.

Under Board precedent, a prima facie case may be established by the record as a whole and is not limited to evidence presented by the General Counsel. *Golden Flake Snack Foods*, 297 NLRB 594 fn. 2 (1990). Thus, the absence of any legitimate basis for an action may form part of the proof of the General Counsel's case. *Wright Line*, 251 NLRB 1083 fn. 12 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). In addition, circumstantial evidence is sufficient to justify an inference of employer knowledge. *Dr. Frederick Davidowitz, D.D.S.*, 277 NLRB 1046 (1985). Accord: *NLRB v. Long Island Airport Limousine Service)*, 468 F.2d 292, 295 (2d Cir. 1972). Thus, under established precedent the judge could infer knowledge from the following: the timing of the allegedly discriminatory discharges and withdrawal of the use of company vans within days of the union organizing meeting; the abrupt termination of the leading union instigator and another union supporter who had both received raises the preceding week; the implausible and sometimes conflicting nature of the reasons advanced by the Respondent for its actions; and the union animus shown by the credited testimony of Alfred Signore that prior to the election company president Guy Greco stated that ''he needed to know who was going to be voting for the union so he knew who to keep.'' In addition, once the judge discredited Jeanne Connors' testimony that she was not told of the meeting until Saturday, July 28, he could conclude that the opposite was true. *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962).

The Respondent contends that we should not consider rebuttal evidence in determining whether the General Counsel has established a prima facie case. The Board's precedent allows the judge to analyze the prima facie case based on all record evidence. Further, the Second Circuit, in which this case arises, recently modified its view in *Holo-Krome v. NLRB*, 947 F.2d 588 (2d Cir. 1991), that rebuttal evidence should not be considered until the General Counsel has presented an adequate prima facie case. Upon the Board's petition for rehearing in *Holo-Krome*, the court held that ''[w]hen the Board reviews an ALJ's decision, and when a court of appeals reviews a Board decision, the reviewing bodies should be able to examine *the entire record* to determine if improper motivation has been shown . . . .'' (Emphasis added.) Finally, even analyzing the evidence as the Respondent proposes, we still find that the General Counsel has presented a prima facie case based on the following factors: the abruptness and timing of the adverse actions; the Respondent's help-wanted advertisements for Service Techs, which appeared in newspapers the same week that Peter Sultzbach and Howard Wyllie were laid off for ''lack of work''; testimony that two new employees were hired shortly after the discriminatees were discharged; testimony that the two employees who did not attend the union meeting did not lose the use of vans for commuting to work; and the union animus reflected in the credited testimony of Alfred Signore quoted above. *Abbey's Transportation Services*, 284 NLRB 698 (1987), enfd. 837 F.2d 575 (2d Cir. 1988).[4]

[1] The name of the Charging Party has been changed to reflect the new official name of the International Union. The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We correct the following inadvertent errors in the judge's decision. In the first sentence of the judge's decision, the date of the hearing should be 1991. Sec. II, par. 5, third sentence should read, ''Neither Beach nor Kostka attended the July 25th union meeting, and neither was denied the use of his van.'' The next-to-the last paragraph of sec. II should state that Sarracco testified that Greco said that he knew that Sarracco had voted for the Union and wanted to know why. These errors do not affect the result in this case.

[3] We shall modify the judge's recommended Order to require, in accordance with his recommended remedy, that the Respondent reimburse the Sultzbach brothers for any reasonable out-of-pocket transportation expenses that they may have suffered because they were denied the use of the vans.

[4] Member Oviatt finds it unnecessary to rely on testimony in the Respondent's case or on the negative inference drawn from the discrediting of Respondent's witness, Jeanne Connors. He finds ample

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Greco & Haines, Inc., Derby, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(c).

''(c) Offer to Peter and Charles Sultzbach the use of vans for the purpose of commuting to and from work and reimburse them for any reasonable out-of-pocket transportation expenses that they may have suffered because they were denied the use of the vans with interest computed in the manner set forth in the remedy section of this decision.''

2. Substitute the attached notice for that of the administrative law judge.

DIRECTION

It is directed that Case 34–RC–981 is remanded to the Regional Director for Region 34 who shall, within 14 days from the date of this Decision, Order, and Direction, open and count the ballots of Peter Sultzbach and Howard Wyllie. The Regional Director shall then serve on the parties a revised tally of ballots and issue the appropriate certification.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge employees because of their union or protected concerted activity.

WE WILL NOT revoke employees' benefits or privileges because of employees' union or protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer, to the extent not already done, immediate and full reinstatement to Peter Sultzbach and Howard Wyllie to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

WE WILL remove from our files any reference to the unlawful discharges of Peter Sultzbach and Howard Wyllie and notify them in writing that this has been done and that the disciplinary actions will not be used against them in any way.

WE WILL offer to Peter and Charles Sultzbach the use of vans for the purpose of commuting to and from work and WE WILL reimburse them for any reasonable out-of-pocket transportation expenses that they may have suffered because they were denied the use of the vans, with interest.

GRECO & HAINES, INC.

evidence in the General Counsel's case-in-chief, as described above, to support the judge's finding that the Respondent knew about Peter Sultzbach's and Howard Wyllie's union activity prior to July 27.

John S. F. Gross Esq. and *Thomas R. Gibbons, Esq.*, for the General Counsel.

Michael J. Soltis Esq. and *Christopher Pinchiaroli Esq. (Jackson, Lewis, Schnitzler & Krupman)*, for the Respondent.

Norman Zolot Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was tried in Hartford, Connecticut, on April 1, 2, and 3, 1990. The charge and amended charge were filed on August 8 and September 28, 1990. The complaint was issued on September 28, 1990.

In substance, the complaint alleged that the employer, for discriminatory reasons, (1) discharged employees Peter Sultzbach and Howard Wyllie and (2) withdrew from Peter Sultzbach and Charles Sultzbach the privilege of using company vans to commute to and from work.

In Case 2–RC–981 the Union filed a petition for an election on August 7, 1990. Pursuant to a Stipulated Election Agreement, approved by the Regional Director on August 21, an election was held on September 13, 1990, in a unit of all full-time and regular part-time mechanics, mechanic helpers, drivers and servicemen employed by the Employer at its Derby, Connecticut facility, excluding all other employees, salesmen, office clerical employees, and all guards, professional employees and supervisors as defined in the Act. Eight votes were cast in favor of the Petitioner, nine votes were cast against and the votes of Peter Sultzbach and Howard Wyllie were challenged. Accordingly, challenges were sufficient in number to affect the results of the election.

On November 7, 1990, the Regional Director issued a report on challenged ballots pursuant to which a hearing was directed to determine the eligibility of the the two challenged voters. As that raised issues also raised by the unfair labor practice complaint, the two proceedings were consolidated by order also dated November 7.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

In early July 1990, Peter Sultzbach contacted the Union and thereafter talked to other employees about unionization.

On Wednesday, July 25, 1990, a union representative met with about 17 of the Company's service employees at the home of Peter Sultzbach. At this meeting all of the employees present, except for Larry Gittings, signed cards authorizing the Union to represent them. Two of the service employees, Danny Beach and Hank Kostka did not attend the meeting.

Gittings indicated at the meeting that he wanted to discuss the situation first with his girlfriend who was Shari Awalt. Awalt worked in the office under the direction of the Company's operations manager Jeanne Connors and she told Connors about the meeting. Although Connors concedes that she found out about the union meeting from Awalt, she asserts that she did not find out until the morning of Saturday, July 28, 1990, when Awalt called her at the office. I find, however, that Connor's testimony regarding this to be unconvincing and I believe that she obtained knowledge of the union activity from Awalt on the evening of July 25 or at the latest on July 26. In this regard, I note that in addition to the improbable claim that Awalt waited 3 days before telling her, Connors asserted that although she (Connors) immediately attempted on Saturday to contact the Company's lawyer (without success) she did not attempt to telephone company owner Guy Greco Sr. until Monday morning because Greco did not come to the office over the weekend. Connors also asserted that despite the Company's alleged financial distress, when Greco was told of the union meeting, he shrugged it off and said; ''What are you worried about, the guys will be the guys.''

On July 27, 1990, when they clocked out, Peter and Charles Sultzbach found notes from Guy Greco Sr. stating:

> Due to unfortunate economic strains & insurance costs, etc as of right now tonight please do not take our vehicles home anymore.
>
> You will need your own transportation from tonight on. We apologize for any inconvenience.
>
> If you need a ride home tonight we would be willing to provide you with one tonight only, because we realize it's short notice.

With respect to the above, both of the Sultzbach brothers had been using company vans to drive to and from work. In addition, Danny Beach and Hank Kostka had similar use of company vans. Both of those employees, neither of whom attended the July 25 union meeting, were denied the use of their vans. The evidence indicates that on July 27, 1990, the Company called in a help wanted advertisement to several area newspapers.[1] This ad, which ran from about July 31 to August 1, read:

> Service Tech-Full Time
>
> Well Water Pump & Water filtration Co. seeks a few exceptional individuals who are looking for a good, steady job with company paid medical benefits, uniforms, and pension plan. Must have valid drivers license, clean driving record, and transportation to work. Work week is Monday–Saturday, 8 AM–6 PM (at least). Individual must be a hard working, motivated, self starter. Experience preferred, but anyone with general mechanical abilities and aptitude will be considered. Pay commensurate with ability and experience. Apply in person:
>
> GRECO & HAINES, INC.

On August 2, 1990, Peter Sultzbach and Howard Wyllie were discharged and each was told that it was due to lack of work.

During the same week of their discharge, two new employees Ed Cuevas and Dominick Sarracco were hired. (Cuevas was hired at $10 per hour and Sarracco was hired at $8 per hour. Both were hired as helpers.) Also, during that same week the following payroll changes were made despite Respondent's assertion that it was trying to save money:

1. Larry Gittings got a raise from $13 to $14 per hour.
2. Alfred Signore got a raise from $11.50 to $12.50 per hour.
3. Thomas Jankowsky got a raise from $7 to $7.50 per hour.
4. Roger Vance got a raise from $8 to $9.50 per hour.

[1] The Respondent asserts that Connor's diary shows that as early as July 12, 1990, she contemplated placing a help wanted advertisement. Assuming that this is true, I don't know how this helps the Respondent's defence as it merely shows that during the busy season (summer), the Company intended to hire additional employees. Secondly, although I accepted Connor's diary into evidence, I do not think that it has the kind of inherent trustworthiness of a normal business record so as to overcome its hearsay aspects. Even a cursory look at the diary, with its handwritten entries, many of which are contained in the margins and in different inks, shows that it would simply be too easy to insert, modify or delete entries after the fact. While I do not suggest that this was done, I also do not believe that the diary is the sort of evidence that should carry any particular weight because of its tangibility. I also note that the diary, as it contains entries on personal matters as well as business matters, may not meet the definition of a business record pursuant to the Fed.R.Evid. 803(6). (It did not qualify as a past recollection recorded as no foundation was made showing that Connors recollection was exhausted.)

In early September 1990, about a week before the election, Alfred Signore credibly testified that Guy Greco Sr. told him that he ''needed to know who was going to be voting for the union so he knew who to keep.''

Also, newly hired employee Sarracco credibly testified that in early September 1990 Guy Greco Sr. said that he knew that Sarracco intended to vote for the Union and wanted to know why.

On October 13, 1990, the Respondent offered Peter Sultzbach employment. As a result, Sultzbach returned to work. Wyllie however has not been offered employment by the Company.

III. DISCUSSION

Regarding the discharges of Sultzbach and Wyllie, the Respondent asserts that the Company decided to let two people go because of financial considerations (i.e., to save money). It contends that the selection of these two employees was made on the basis of their relative value versus their relative cost. In the case of Peter Sultzbach, the Company asserts that although he was a good worker, he was not worth the amount of money he was earning at the time of his layoff. ($12 per hour) In Wyllie's case, the Company asserts that although he was not getting paid much ($7 per hour), his work was so poor that he was chosen for that reason.

The Company asserts that due to a downturn in new home construction, which began in 1988, the Company has been hard pressed to maintain its previous level of business. It asserted that in January 1990 it began to seriously contemplate cost cutting measures and that in March 1990, it was decided to lay off excess employees if at the end of the busy season, business had not improved over the previous year. Both Connors and Greco asserted that in March they discussed their employees and made up a list of those employees who would be likely candidates for layoff if that was necessary. While both kept referring in their testimony to a ''list'' there was in fact no such list ever compiled as a physical document. Accordingly, the assertion that Wyllie and Sultzbach were placed on a list of potential employees to be laid off, is an assertion without any recorded basis.[2]

While the Respondent claims that it intended to lay off employees before the start of its slow season, the fact is that August 2, 1990, was in the middle of the busy season. Thus, according to Connors and demonstrated by Respondent's exhibit 4, the slow months of Respondent's business run from late October through February and the busy months run from May through September. Further, the Company, according to Connors is often short handed during the summer months due in part to an increase in business and employee vacations.

The Respondent's assertion that it laid off employees Wyllie and Sultzbach on August 2 because of financial distress is contradicted by the facts that it hired two employees within the same week. Moreover, the new employee's rates of pay were comparable to the combined pay rates of Wyllie and Sultzbach.[3] As it was conceded that new employees require a 2- to 3-month period of time to be trained to their tasks, the hiring of the two new employees after the discharge of Wyllie and Sultzbach makes no sense at all.

Even the employer's explanations require explanations. Although contending that it intended to save money by laying off the high priced Peter Sultzbach, it hired Ed Cuevas at $10 per hour, a rate of pay that was higher than that paid to any other helper. To explain this, Connors asserted that an exception was made because Cuevas had a plumber's license and could do certain work that the Company's employees could not do. Thus, the Respondent asserts that in an effort to save money, it hired an untested man at a higher rate of pay because he might be able to perform work that the Company did not then offer to the public.

Respondent argued that even though Cuevas and Sarracco together earned almost the same rate of pay as Sultzbach and Wyllie, money would be saved because the Company would not have to pay medical insurance and other benefits for a period of time. Yet the help wanted advertisement explicitly stated that such benefits would be paid to anyone hired. The explanation then offered was that this was a previously used advertisement which, for simplicity's sake, was used again.

The Respondent's contention that it laid off Sultzbach and Wyllie in order to save money was contradicted not only by the immediate hiring of two new employees but also by the evidence showing that four other employees received substantial pay increases *during the same week.*

Whatever the state of the Company's business at the end of July 1990,[4] the evidence in my opinion, establishes that the Company did not intend to reduce costs by reducing payroll expenses insofar as its service employees. If anything, the Company increased its payroll expenses from the period immediately before the discharge of Sultzbach and Wyllie to the period immediately afterwards.[5] (At the beginning of March 1990 the Company, according to its payroll records, employed 18 service employees. In August 1990 the number of its service employees stood at 17.)[6]

[2] In a pretrial affidavit, Connors stated that the ''list'' consisted of employees Sultzbach, Wyllie, Cook, and Jankowsky. In her testimony, however, the ''list'' consisted of Sultzbach, Wyllie, Cook, Brown, and Anderson.

[3] As of July 27, 1990, Peter Sultzbach was earning $12 per hour and Howard Wyllie was earning $7 per hour. Both had received raises about a week before they were discharged.

[4] R. Exh. 4 is a summary of the sales of pumps, tanks, and units covering the periods from 1987 through 1990. It shows a steady drop in the sale of all units from 3422 in 1987 to 3003 in 1988 to 2742 in 1989 and 2661 in 1990. The exhibit does not show, however, the revenues from service operations which, according to Connors, were successfully intensified during 1990.

[5] Even if the evidence showed that layoffs were appropriate to the Company's business situation, the Company's explanations as to why it chose Wyllie and Sultzbach was unconvincing. While asserting that Wyllie was not a good employee (albeit low paid), and that Sultzbach was paid too much, both received raises the week immediately preceding their discharges. (Sultzbach received an earlier raise in March 1990 from $10 per hour to $11.50 per hour.) Although Respondent described Wyllie as being unkempt, Connors asserted, at the hearing, that this was not a reason for his discharge. This was, however, inconsistent with her pretrial affidavit.

[6] The Respondent asserted that in 1990 and before August 2, 1990, there were several instances where service employees were either laid off, dismissed, or quit without being replaced. This testimony was contradicted by the Company's payroll records. Despite testimony that no one was hired to replace Martin Brown and Alex Anderson, the records show that after their layoffs, Thomas Jankowsky

Continued

Given the timing of the discharges, the pretextual nature of the claimed reasons and the credited testimony of Alfred Signore, it is my opinion that the General Counsel has made out a strong prima facie case that employees Peter Sultzbach and Howard Wyllie were discharged because of their union activities. Pursuant to *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), once the General Counsel has made out a prima facie showing to support an inference that protected conduct was a motivating factor in a discharge, the burden shifts to the employer to demonstrate ''by a preponderance of the evidence that the same action would have taken place even in the absence of the protected conduct.''

I have indicated above some of the contradictions in the Respondent's defenses. Suffice it to say that the asserted reasons for the discharge of the two employees were, to my mind, unpersuasive. Therefore, it is concluded that by discharging Peter Sultzbach and Howard Wyllie on August 2, 1990, the Respondent violated Section 8(a)(1) and (3) of the Act. By the same token, as these employees were unlawfully discharged, they were eligible voters in the election held on September 13, 1990, and their ballots should be opened and counted.

I also conclude that the Respondent violated the Act by disallowing Peter and Charles Sultzbach from using company vans to drive to and from work.

As of July 26, 1990, there were four employees including the Sultzbach brothers who for various reasons were allowed to use company vans to commute to and from work.[7] On July 27, 2 days after the union meeting at Peter Sultzbach's house, the Company took away their use of the vans. The two employees who did not attend the union meeting were allowed to keep the vans. Connors testified that over a period of at least 6 months she observed, on about 8 to 10 occasions, that Charles Sultzbach parked his van at a local pub after work. She also testified that over this period of time, she advised Guy Greco Sr., without success, to revoke Charles Sultzbach's privilege of using the van. The evidence also shows that on one occasion, in March or April 1990, Connors held a meeting with the employees where, among other things, she warned them about abusing the privilege of using company vans for private purposes. Peter Sultzbach acknowledged that Connor's comments probably were related to the fact that his brother took the van to a neighborhood bar.

Connors testified that on the evening of July 26, 1990, she saw the van used by Charles Sultzbach at the bar. (Charles Sultzbach was not called to rebut this assertion and I therefore shall conclude that he did in fact drive the van to the local bar.) Connors also testified that when she told Guy Greco about the situation, the latter finally told Connors to do what she thought best. According to Connors, she thereupon decided to take away the van from Charles Sultzbach. She testified that she also decided to take the van away from Peter Sultzbach, essentially because she believed that Charles would prevail upon his brother to give him a ride in Peter's van. Connors testified that another reason she decided to take away Peter's van was because she ''knew'' that she was about to lay him off the following week. (As described above, it is concluded that the Respondent discharged Peter Sultzbach because of union considerations.)

Contrary to Connors, Guy Greco Sr. testified that financial considerations were the primary reason that the vans were taken away from the Sultzbachs. And in fact that is the reason asserted in the memorandum explaining the decision to the Sultzbach brothers.

While the Respondent makes out a colorable claim as to why it took away the van from Charles Sultzbach on July 27, 1990, the reasons it advances for its decision vis-a-vis Peter Sultzbach strike me as being nonsequiters. I therefore have no difficulty in concluding that the action of disallowing Peter Sultzbach from using a company van was motivated by antiunion considerations. Moreover, it seems to me that after tolerating the conduct of Charles Sultzbach's for more than 6 months, the timing of the decision, 2 days after the union meeting, is more than suggestive of an illegal motivation regarding his use of the van.

CONCLUSIONS OF LAW

1. By discharging employees Peter Sultzbach and Howard Wyllie on August 2, 1990, the Respondent has violated Section 8(a)(1) and (3) of the Act.
2. By revoking the van use privileges of Peter and Charles Sultzbach, on July 27, 1990, the Respondent has violated Section 8(a)(1) and (3) of the Act.
3. The ballots of Peter Sultzbach and Howard Wyllie should be opened and counted in the election held in Case 34–RC–981.
4. The aforementioned violations of the Act affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged Peter Sultzbach and Howard Wyllie on August 2, 1990, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Further, Respondent must remove from its files any reference to these discharges and notify the employee that this has been done and that the discharges will not be used against them in any way.

Further, I recommend that the Respondent allow the Sultzbach brothers to resume using company vans but only for commuting purposes. It is also recommended that the Respondent reimburse them for any reasonable out of pocket transportation expenses that they may have suffered because they were denied the use of the vans.

Insofar as the representation case is concerned, I recommend that the ballots of Peter Sultzbach and Howard Wyllie be opened and counted, that a revised tally of ballots be issued and that if the Union obtains a majority of the

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and David O'Donnel were hired in May 1990 and that Derek Palange was hired in late June 1990.

[7] In the case of Peter Sultzbach, the credible evidence shows that he was allowed to use a company van in exchange for his agreement to go off the Company's health insurance plan and become a beneficiary on his wife's insurance plan.

valid votes counted, that it be certified as the collective-bargaining representative for the employees in the bargaining unit described in the Stipulation For Certification Upon Consent Election. If the Union does not obtain a majority of the valid votes counted, it is recommended that a Certification of Results be issued.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

The Respondent, Greco & Haines, Inc., Derby, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because of their union or protected concerted activities.

(b) Revoking employee benefits or privileges because of their union or protected concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer, to the extent not already done, immediate and full reinstatement to Peter Sultzbach and Howard Wyllie to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

(b) Remove from its files any references to the unlawful discharges of Peter Sultzbach and Howard Wyllie and notify them in writing, that this has been done and that the disciplinary actions will not be used against them in any way.

(c) Offer to Peter and Charles Sultzbach the use of vans for the purpose of commuting to and from work.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Derby, Connecticut, copies of the attached notice marked ''Appendix.''[9] Copies of the notice, on forms provided by the Regional Director for Region 34 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER RECOMMENDED that the petition in Case 34–RC–981 be remanded to the Regional Director for Region 34 for action consistent with the findings in this Decision.

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''